

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ederick Dillard,

Plaintiff

v.

Nevada Department of Corrections, et. al.,

Defendants

Case No. 2:24-cv-01990-JAD-DJA

**Order Dismissing
and Closing Case**

Plaintiff Ederick Dillard initiated this civil action by filing an application to proceed *in forma pauperis* but did not submit a complaint.¹ On October 28, 2024, this court ordered the plaintiff to either file a signed complaint or file a notice under Federal Rule of Civil Procedure 41(a)(1)(A)(i) voluntarily dismissing this action by November 27, 2024.² That deadline expired without any response by the plaintiff.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.³ A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules.⁴ In determining whether to dismiss an action on this ground, the court must consider:

(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its

¹ ECF No. 1.

² ECF No. 3.

³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁴ *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic alternatives.⁵

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
4 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
6 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
7 action.⁶ The fourth factor—the public policy favoring disposition of cases on their merits—is
8 greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
10 to correct the party’s failure that brought about the court’s need to consider dismissal.⁷ Courts
11 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
12 explore possible and meaningful alternatives.”⁸ Because this action cannot progress unless the
13 plaintiff files a complaint, the only alternative is to enter a second order setting another deadline.
14 But issuing a second order will only delay the inevitable and further squander the court’s finite
15 resources because the plaintiff ignored the first order. Setting another deadline is not a
16 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

18 ⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
19 *Malone*, 833 F.2d at 130).

20 ⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).


21 ⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
“initial granting of leave to amend coupled with the warning of dismissal for failure to
comply[.]” have been “eroded” by *Yourish*).

⁸ *Henderson*, 779 F.2d at 1424.

1 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
2 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without
3 prejudice based on the plaintiff's failure to file a complaint in compliance with the court's order.
4 The Clerk of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**.
5 If Ederick Dillard wishes to pursue his claims, he must file a signed complaint in a new case, and
6 he must pay the fee for that action or file a complete application to proceed *in forma pauperis*.

7 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* (**ECF**
8 **No. 1**) is **DENIED as moot**.

9 Dated: February 25, 2025



U.S. District Judge Jennifer A. Dorsey